

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LOLA WINSTON

PLAINTIFF

vs.

No. 2:00CV293-D-B

TB OF MISSISSIPPI, INC.;
FRED'S STORE OF TENNESSEE,
INC.; et al.

DEFENDANTS

OPINION

Presently before the court is the Defendant Fred's Store of Tennessee, Inc.'s motion to sever, and the Plaintiff's motion to remand this matter to the Circuit Court of Bolivar County. Upon due consideration, the court finds that the Defendant's motion should be granted, and the Plaintiff's motion should be granted in part and denied in part.

A. Factual Background

On August 4, 1998, the Plaintiff commenced this action against TB of Mississippi, and against two of its employees, Thomas Longale and Erica Taylor, in the Circuit Court of Bolivar County, Mississippi. The action involves a slip-and-fall that occurred on February 28, 1997, in a Taco Bell restaurant in Cleveland, Mississippi. Those Defendants then sought removal of the action to this court on the grounds of fraudulent joinder, alleging that the two individual Taco Bell employees were joined to defeat diversity. The Plaintiff subsequently filed a motion to remand, and the court remanded the case, in an April 12, 1999, opinion and order, holding that neither Longale nor Taylor were fraudulently joined.

Thereafter, Plaintiff's counsel learned that the Plaintiff had been involved in an unrelated slip-and-fall at the Fred's store in Cleveland, Mississippi. This slip-and-fall occurred on June 27, 1998, more than one year after the Plaintiff's slip-and-fall at the Taco Bell. The Plaintiff then, on October

5, 2000, filed an amended complaint in state court, naming Fred's Store of Tennessee, Inc., as a defendant in the same state court lawsuit with TB of Mississippi and its employees.

Fred's removed the case to this court on December 22, 2000, on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Also on December 22, 2000, Fred's filed a motion to sever the Plaintiff's claims against Fred's from the Plaintiff's claims against TB of Mississippi and its employees. On January 5, 2001, the Plaintiff motioned the court to remand this entire matter to state court.

B. Standards for Remand and Severance

Rule 20 of the Federal Rules of Civil Procedure governs the joinder of parties and provides that:

All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a).

Thus, in order for the joinder of multiple defendants to be proper, there must be both common questions of law or fact *and* the rights asserted must arise out of the same transaction or series of transactions. Iron Workers Welfare Fund v. Meche, No. 91-0514, 1991 WL 162123, at *1 (E.D. La. Aug. 7, 1991). While there is no strict rule for determining what constitutes the same transaction or series of transactions for purposes of Rule 20, the joinder of defendants is encouraged so long as there are enough ultimate factual concurrences that it would be fair to the defendants to require them to defend jointly. United Mine Workers v. Gibbs, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L. Ed. 2d 218 (1966).

Should a court find, pursuant to Rule 20, that a party has been misjoined, Rule 21 of the Federal Rules of Civil Procedure provides that:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. *Any claim against a party may be severed and proceeded with separately.*

Fed. R. Civ. P. 21 (emphasis added).

Although the purpose of Rule 20 is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits, it is well established that unrelated claims may be severed, within the court's discretion, to promote the legitimate interest of some of the parties. Fed. R. Civ. P. 21; Demboski v. CSX Transp., Inc., 157 F.R.D. 28, 29 (S.D. Miss. 1994). In utilizing its discretion to sever, a court should consider such factors as whether there is a logical relationship between the claims, and whether there is any overlapping proof or legal question. Little v. BellSouth Telecomm., Inc., No. 95-1646, 1995 WL 468256, at *1 (E.D. La. Aug. 7, 1995).

As for the Plaintiff's motion to remand, the Judiciary Act of 1789 provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Original federal jurisdiction exists "where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different states . . ." 28 U.S.C. § 1332(a); Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd., 99 F.3d 746, 751 (5th Cir. 1996).

C. Discussion

1. Motion to Sever

Fred's argues that, pursuant to Rules 20 of the Federal Rules of Civil Procedure, it has been improperly joined in this litigation, having been made a party to a suit involving two separate alleged acts of negligence on two separate and distinct dates and not arising out of the same transaction or occurrence. Fred's further argues that, pursuant to Rule 21 of the Federal Rules of Civil Procedure, the court should sever the Plaintiff's claims against Fred's from the Plaintiff's claims against the other parties.

The court finds that the two incidents the Plaintiff complains of do not stem from a common transaction or event; rather they stem from separate and unrelated slip-and-fall incidents, occurring under completely different factual circumstances at two separate businesses, well over a year apart. Even in light of the fact that joinder of parties is encouraged, the court finds that the two incidents that form the basis of the Plaintiff's claims are unrelated in any significant way, involve entirely different circumstances, and the facts required to prove one claim will be wholly irrelevant to the other. As such, the court finds that the two incidents do not amount to a series of transactions or occurrences such that joinder of Fred's as a defendant in the Plaintiff's state court action is proper pursuant to Rule 20.

The Plaintiff's claims, therefore, shall be severed into two separate actions; one containing the Plaintiff's claims against Fred's, and the other containing the Plaintiff's claims against TB of Mississippi and its employees. Further, as noted below, this court shall retain jurisdiction of the Plaintiff's claims against Fred's, and the Plaintiff's claims against TB of Mississippi and its employees shall be remanded back to state court.

2. Motion to Remand

The Plaintiff has motioned the court to remand this entire matter to the Circuit Court of Bolivar County, Mississippi, arguing that diversity jurisdiction does not exist.

As to the Plaintiff's severed claims against Fred's, it is undisputed that the Plaintiff is a citizen of Mississippi, and Fred's is incorporated in the State of Tennessee, with its principal place of business in Tennessee. It is further undisputed that the amount in controversy in this matter exceeds \$75,000. As such, the court possesses diversity jurisdiction over this case. See 28 U.S.C. § 1332(a) (Original federal jurisdiction exists "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different states . . ."). Removal of this case was therefore proper pursuant to 28 U.S.C. §§ 1441 & 1446, and the court shall deny the Plaintiff's motion to remand her claims against Fred's to state court.

As to the Plaintiff's claims against the remaining Defendants, the court has already determined that it does not possess subject matter jurisdiction over those claims. See Winston v. TB of Mississippi, Inc., No. 2:98CV161, slip op. at 5 (N.D. Miss. April 12, 1999). As such, the Plaintiff's severed claims against TB of Mississippi, Thomas Longale, and Erica Taylor, shall be remanded again to state court for ultimate resolution.

D. Conclusion

In sum, the court holds that the Plaintiff's claims against the Defendant Fred's Store of Tennessee, Inc., shall be severed from the Plaintiff's claims against the Defendants TB of Mississippi, Inc., Thomas Longale, and Erica Taylor. The court has jurisdiction over the Plaintiff's claims against Fred's, and shall deny the Plaintiff's motion to remand those claims to state court. The court has already determined that it is without subject matter jurisdiction to adjudicate the Plaintiff's claims

against TB of Mississippi, Inc., Thomas Longale, and Erica Taylor. As such, those claims shall be remanded to state court.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of March 2001.

_____/s/_____
Chief Judge

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DEFENDANTS

ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Defendant Fred's Store of Tennessee's motion to sever (docket entry 4) is GRANTED, and the Plaintiff's claims against Fred's are hereby SEVERED from the Plaintiff's claims against the remaining defendants;
- (2) the Plaintiff's motion to remand (docket entry 7) is GRANTED IN PART and DENIED IN PART;
- (3) the Plaintiff's motion is GRANTED as to the Plaintiff's claims against TB of Mississippi, Inc., Thomas A. Longale, and Erica Taylor, and those claims are hereby remanded to the Circuit Court of Bolivar County, Mississippi, for ultimate resolution;
- (4) the Plaintiff's motion is DENIED as to the Plaintiff's severed claims against the Defendant Fred's Store of Tennessee, and the court hereby retains jurisdiction over those claims under the present cause number.

SO ORDERED, this the ____ day of March 2001.

_____/s/_____
Chief Judge